

**DEPARTMENT OF STATE REVENUE**

**FIRST SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 98-0403**

**Financial Institutions Tax**

**Years Ended 12/31/90, 12/31/91, 12/31/92, 12/31/93, and 03/01/94**

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**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer, in a letter dated March 24, 1999 requested a rehearing based on the information provided in the letter.

**ISSUE**

**I. Tax Administration – Penalty**

**DISCUSSION**

At issue is whether the taxpayer was negligent in reporting and remitting Financial Institution Tax.

Taxpayer states the information provided in its letter dated March 24, 1999 was not available to the Department of Revenue earlier and therefore a proper assessment of circumstances was not

able to be done by the Department, as limited facts were known. Listed below are the facts:

In the Letter of Findings, the Department determined that the taxpayer was negligent in its failure to include all items subject to tax. The Department also states that the issues assessed in the audit were clear and the assessments represented approximately fifteen percent (15%) of the total tax due. Based on the facts provided below, taxpayer asserts it was not negligent in its tax reporting to the State of Indiana and the issues unclear in the Indiana Code and Regulations represent five percent (5%) or less of the total tax due.

Taxpayer supplies the following facts to determine negligence. The Department states its finding immediately after each argument.

Foreign Income Exclusion – For each year in the audit, Taxpayer reported foreign income at the gross amount as opposed to net of related expenses. This was due to the fact that the related expense amounts were not available for the years under audit. Taxpayer's foreign tax credit position was nominal and tracking related expenses was unnecessary for federal tax return reporting purposes. Therefore, taxpayer was not negligent in its tax reporting, the fact was that the information was not available.

The Department does not find the taxpayer's argument persuasive as IC 6-5.5-1-2 (a)(2) clearly states that income derived from sources outside the United States, as defined by the Internal Revenue Code must be subtracted.

Add-back of Taxes – There were adjustments to the add-back amounts for taxes, however, for the audit periods, the cumulative effect of these adjustments was favorable for taxpayer and would result in a refund of Indiana taxes based on this adjustment alone. Therefore, taxpayer was not negligent with respect to the add-back of taxes but rather was conservative with respect to the taxes add-back.

The Department agrees that the adjustments to the add-back amounts for taxes would result in a refund, if no other adjustments were made. No penalty is assessed for a refund amount.

Charitable Contributions – Tax period 12/31/92 was the only period in which an adjustment for charitable contributions was made. This adjustment was the result of a mere oversight. The fact that this was simply a mistake and that this adjustment only occurred in one tax period and was not consistently incorrect, it cannot be construed as negligence.

The Department finds that a mistake on the tax return, even for one year, may be considered negligence. The taxpayer should have procedures in effect to assure all postings and adjustments are correctly made.

Interest – There were two interest issues during the audited tax years. One relates to ESOP interest and the other relating to interest on municipal securities. The Department states that all

items are clear in the Indiana Code and Regulations. Taxpayer disagrees with this statement as evidenced by the protest of these two issues by the taxpayer (Exhibits A and B of the Audit Summary). Taxpayer felt these items were unclear in the Indiana Code and Regulations. However upon initial denial by the Department, the amounts associated with these items were not significant enough for Society Corporation to pursue in Tax Court. Again, the adjustments for these two items can not be construed as negligence as they were not clear in the Indiana Code and Regulations.

The assessment does not include adjustments for the above issue. The taxpayer during audit proposed to exclude Indiana and United States bond interest income citing *Fort Wayne National Corporation v. Indiana Department of Revenue* No. 49T10-TA-00017 (Ind. Tax Ct. 1993), vacated and aff'd No. 49S10-9406-TA-521 (Ind. 1995). The audit did not make the proposed adjustments, therefore, it has no tax effect nor was a penalty applied.

Company A for the period 03/31/90 – A penalty was assessed for the Company A 12/31/90 tax period. The adjustment for this tax period was the result of a federal audit adjustment, not an error in taxpayer reporting.

Taxpayer timely filed with the auditor its Federal RAR adjustments which resulted in an adjustment to income in the amounts of \$19,786 in 1990, credit amounts of \$224,079 in 1991 and \$2,148,783 in 1992. The department will waive the penalty for 1990.

Taxpayer's final argument states that adjusting the audit workpapers for the items enumerated above, which were not a result of negligence or were not clear in the Indiana Code and Regulations, would show that the resulting assessed tax is approximately five percent (5%) not fifteen percent (15%) of the total tax due. In addition, the five percent results only because of the change in net operating loss in later years due to the adjustments in earlier years.

The Department looks to the audit years for the adjustments which covers calendar years 1992 and 1993 and fiscal year ended March 1, 1994. Taxpayer paid approximately eighty-five percent (85%) of the tax due for those years. Taxpayer calculated the 1990 and 1991 years, which were open only for the Federal modifications (RAR), to arrive at its five percent (5%) total tax due. No other adjustments were made to 1990 and 1991 due to the statute of limitations.

Taxpayer further states that based on these facts that the Department did not have earlier in order to properly assess negligence, it is shown that the taxpayer was not negligent in its tax reporting duties to the State of Indiana and all penalties should be waived.

The documentation provided by the taxpayer, however, does not relieve the taxpayer from the negligence penalty (as shown beneath each argument).

The department does not look to each adjustment to determine penalty, but the overall picture of each tax year and whether the issues are clear in the Indiana Code and Regulations. The taxpayer

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failed in reporting several areas of taxation that amounted to approximately fifteen percent (15%) of the tax due.

**FINDING**

Taxpayer's protest is respectfully denied with regard to the penalty assessed with the exception of calendar year 1990 for the RAR adjustment. The Department allows a waiver of \$168.20 penalty for calendar year 1990.